IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11453 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASENDRASINH SATUBHA JADEJA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 11453 of 2004

MR PRAVIN GONDALIYA for Petitioner No. 1

..... for Respondente No.1-2

MR HM PRACHCHHAK, AGP for Respondent No.3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 12/01/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application, the petitioner has challenged the order passed by the Police Commissioner, Rajkot on 19.06.2004 in exercise of

powers conferred upon him under Section 3(1) of the Prevention of Anti Social Activities Act, 1985 ["PASA Act" for short], directing the detention of petitioner as dangerous person within the meaning of the PASA Act. The petitioner under detention in pursuance of the said order from 30.06.2004.

2. The grounds as served upon the petitioner and placed on record depicting that while passing of the order, the detaining authority took into consideration two types of material, firstly investigating papers of two criminal cases filed against the petitioner one at Malavianagar Police Station, Rajkot on 10.10.2003 under Sections 436, 506(2), 188 and 114 of the Indian Penal Code and second at Bhagtinagar Police Station, Rajkot on 03.06.2004 under Sections 324, 323, 504, 114 and 188 of the Indian Penal code. In both the cases, the petitioner was on bail. In addition to this, the detaining authority also relied upon two incamera statements of the witnesses as recorded by the sponsoring authority on 16.06.2004 and verified by the detaining authority on 17.06.2004 narrating the incidents of 15.04.2004 and 22.05.2004. One witness stated that on 15.04.2004, the petitioner with his associates and accomplice came near the place of business of the witness, they were shouting and were speaking abuses. Out of them some persons who were in drunken condition. This activity was causing damage to the business of the witness and, therefore, the witness requested the petitioner to sit somewhere else and on saying so, the petitioner was excited and slapped the witness. When witness stated to the petitioner that he might file a police complaint against the petitioner, the witness was threatened by knife. A crowd was gathered but none intervene on account of fear of the petitioner and his associates. To create terror amongst the crowd, the petitioner and his associates rushed towards the crowd with the open knife. The witness requested to conceal his identity. While other witness stated that on 22.05.2004 along with his rickshaw, while he was parked at Bus-stand, the petitioner came there along with his two accomplice with weapon like hockey and pipe. They boarded the rickshaw of the witness and directed him to take rickshaw at Kakaria road. In anticipation that the petitioner and his associates who were going for picking up quarrels the witness refused to take his rickshaw at Kakaria Road. On his refusal, the petitioner was excited and gave abuses to the witness and with weapons attempted to damage the rickshaw. The witness stated to them that he might file a complaint before the police against the petitioner and his associates. On saying so, raising hockey stick, the

witness was threatened by the petitioner that if any complaint is filed against the petitioner, the witness would be done to death. A crowd was gathered around, but nobody intervene due to fear of the petitioner and his associates. The petitioner and his associates ran towards the crowd with weapons and people were scared and dispersed. The atmosphere of terror was spread in the area. Relying upon this two categories of material and having satisfied that the names and addresses of the witnesses were not proper to be disclosed in public interest, the detaining authority passed the order of detention which is under challenge in this petition.

3. Learned advocate Mr.P.S.Gondalia and learned AGP Mr.H.M.Prachchhak, for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP, is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner to challenge the order of detention and controverted and opposed by the learned AGP, it appears that this application can be disposed of on the ground that whether there was sufficient material before the detaining authority to subjectively satisfy himself that due to activity of the petitioner, the maintenance of the public order was disturbed. As aforesaid, in this respect, the detaining authority placed reliance on the investigating papers of the two criminal cases and the statements of the witnesses, whose names and addresses are not disclosed in public interest claiming privilege under Section 9(2) of the PASA Act.

5. When any activities of the detenu directly or indirectly is causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof a grave or widespread danger to life, or public health is affected, such activity is considered to be prejudicial to the maintenance of public order as envisaged by the PASA Act. It is, therefore, necessary to refer to two decisions of the Apex Court to understand the law in respect of when public order is said to have been disturbed. In the matter of Mustakmiya Jabbarmiya Shaikh Vs. M.M.Mehta, Commissioner of Police and others, reported in 1995 (2) G.L.R. 1268, in almost similar circumstances, wherein allegations were the detenu picked up quarrel, rushed towards the crowd creating atmosphere of terror, the Apex Court observed in paragraph No.11 that taking the aforesaid two incidents and the allegations on their face value as they were, it was difficult to comprehend that

they were the incidents involving public order. The Apex Court further observed that they were incident directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquillity of the locality. The Apex Court further observed that such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order.

6. In the matter of Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and others, reported in (1999) 5 SCC 613, ratifying the ratio laid down by the above said decision of Mustakmiya Jabbarmiya Shaikh, the Apex Court observed in paragraph No.5 that it always depends upon the degree of disturbance of its impact on even tempo of life of the society or even people to bring particular activities to be prejudicial to maintenance of public order. The Apex Court further observed that even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. Having expounded this principle of law, the Supreme Court in the said case on facts held that the activity of that detenu was prejudicial to the maintenance of public order because of facts it was found that detenu had formed a gang for extorting money from people to put them to fear to death and concerned authority pointed out to incidents in which refusal to pay money demanded, the victim had been dragged and assaulted. There was in that case enough material of habitual tendency of activity prejudicial to the maintenance of public order on the part of that detenu.

7. The above principle of law expounded by the Apex Court in the above two decisions is adopted and explained by the Division Bench of this Court in the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and others, reported in 2000 (1) G.L.H. 393. In almost similar circumstances of this

case, after considering many decisions, the Division Bench of this Court in paragraph No.22 observed as under:-

> "So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

8. In that case also some criminal cases were registered against the petitioner, which was taken into consideration by the detaining authority as well as the detaining authority took into consideration three incamera statements of the witnesses, almost similar to the statements of the witnesses in this case.

9. Thus, on the above principle of law, a line has been drawn in each case to discern the difference between the "maintenance of law and order" and "maintenance of public order". The cases registered against the petitioner shall take its own course according to law and that the fact by itself may not be sufficient to reach to a subjective satisfaction that the petitioner was a dangerous person especially in the facts and circumstances of the nature of the cases filed against the petitioner. So far as the incamera statements of the witnesses are concerned, there is nothing on those recorded statement even if they are taken on their face value, that would lead to an inference that by such stray incident public at large or very large section of society or even the tempo of life of the community was so affected that the public order was disturbed. It is the fallout extent and reach of the activity which would

decide whether particular activity is prejudicial to the maintenance of public order or whether they are the incidents of merely breach of law and order. What is stated in incamera statements could have been taken care of by ordinary law. The incidents appears to be more individual dispute, quarrel and skirmishes, than involvement of a public at large. Therefore, the Division Bench of this Court in the matter of Ashokbhai Jivraj, after relying on Apex Court's decisions in paragraph No.21 observed that the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order. Therefore, even if is stated by the witness that the petitioner rushed towards the crowd and the crowd was helter-skelter, the case would not borne of maintenance of law and order. Thus in the facts and circumstances of this case, there was no material before the detaining authority to reach to a subjective satisfaction that by the activity of the petitioner, the maintenance of public order was adversely affected so as to detain the petitioner as dangerous person. Therefore, the order under challenge is required to be quashed and set aside.

10. In the result, in view of the above discussion, this Special Civil Application is allowed. The order passed by the District Magistrate, Vadodara on 07.04.2004 in exercise of powers under Section 3(2) of the PASA Act against the petitioner is hereby quashed and set aside. The petitioner - Rajendrasinh Satubha Jadeja is directed to be set at liberty, if he is not required to be detained in Jail for any other purpose. Rule made absolute.

[J. R. VORA,J.]

(vijay)